

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 548 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgement?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

HEIRS OF NATVARLAL GORDHANDAS MODI

Versus

ARVINDBHAI CHIMANLAL SHAH

Appearance:

MR RN SHAH for appellant.

MR CC KAMDAR for Respondent.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 15/12/2000

ORAL JUDGEMENT

This is plaintiff's First Appeal under Sec.96 of
the Code of Civil Procedure directed against the judgment
and decree passed by the City Civil Court, at Ahmedabad
in Civil Suit No.2627/81 on 23rd Sept.1985 whereby the

plaintiff's suit has been dismissed.

2. The appellant-plaintiff herein filed the suit against the respondent - defendant for recovery of a sum of Rs.10,000/-. The plaintiff gave the description in the plaint as under:

Vadi:- "Geeta Corporation vathi ane tharafthi Natvarlal Gordhandas Modi, U.Va.Aa.51, Dhandho Vepar, Te.Vansmor Flats, Maninagar Fire Brigade Pase, Krushnabaug, Ahmedabad-8.

Virudh

Prati-

vadi:- Arvindbhai Chimanlal Shah, Pukthvayna, Dhandho Vepar, Re. Balaji Na Mandir Pase, Dhalni Pole, Astodiya, Ahmedabad-1."

There is no dispute between learned Counsel appearing for the appellant as well as the respondent that the correct English translation of the title of the plaintiff in the suit is : Shri Natvarlal Gordhandas Modi, for and on behalf of Geeta Corporation, residing at Once More Flats, Near Maninagar Fire Brigade, Krushnabaug, Ahmedabad.

3. The plaintiff came with the case that it was a society organiser and a contractor doing business in the name and style of Geeta Corporation and was the sole proprietor thereof, while the defendant is an Engineer and doing the work of building construction contracts. The defendant was in need of money and requested the plaintiff to advance him an amount of Rs.10,000/-. The plaintiff advanced the amount of Rs.10,000/- to the defendant vide Cheque dated 13th Sept.1978 drawn on Vijaya Bank and in lieu thereof, the defendant executed a promissory note. When the plaintiff demanded the money back, the defendant did not pay despite several demands on one pretext or the other. The plaintiff issued a notice dated 9th August 1988 but the defendant did not comply with the same nor did he reply to the notice and therefore, the plaintiff filed the present suit for the recovery of Rs.10,000/- with running interest at the rate of 15% per annum from the date of the suit till realisation.

4. The defendant sought leave to defend vide Exh.13 and by purshis Exh.21 has adopted that affidavit as its written statement wherein he raised the contention that Geeta Corporation was a partnership firm and that it was

the partnership concern which had advanced him Rs.10,000/- and that the plaintiff had not advanced any amount to him and so the plaintiff had no right to file the present suit. It was also pleaded that the defendant had returned the amount to one of the partners, Shri Govindbhai Chhotabhai Vyas, that the defendant had replied to the notice on 3rd/8th Sept.1981 and the same had been received by the plaintiff on 9th Sept.1981 and so the present suit was not maintainable and the suit be dismissed with costs.

5. On the basis of the pleadings of the parties, the trial Court framed the following issues nos.1 to 4, the findings on each of the issues is recorded against each issue as under:

(1) Whether the defendant In the affirmative.

proves that Geeta Corporation is a partnership firm and not a proprietary concern?

If yes, whether the suit as framed is not maintainable.

(2) Whether the defendant In the negative.

proves that he has paid the suit amount to Govindbhai Chhotlal Vyas who was a partner in Geeta Corporation? If so, what is its effect?

(3) Whether the plaintiff As per final order.

is entitled to reliefs claimed?

(4) What order and decree? As per final order.

6. It may be stated that the receipt of the amount of Rs.10,000/- through the pronote was not disputed and on the contrary, the defence has been taken by the defendant that the amount has been returned. However, the trial Court itself on consideration of issue no.2 has held that the defendant had failed to prove that the amount had been returned by him. However, one fails to understand as to what is meant by saying in the end of the decision of this issue when the trial Court has said that the question of deciding its effect does not arise and therefore the trial Court decides the issue no.2 in

the negative. Once the issue had been framed as to whether the defendant had been able to prove the return of the suit amount, the effect was to be examined only in the context of the advance which had been made and which had not been disputed. As a matter of fact, this observation as it has been made in the end of the issue makes no sense. So far as the issue no.1 is concerned, in this issue, the defendant was to prove as to whether Geeta Corporation was a partnership firm and not a proprietary concern and if yes, whether the suit as filed was not maintainable? The trial Court has found that the defendant had not been able to prove that Geeta Corporation was a partnership firm and that the amount had been advanced to the defendant by the said partnership firm. The trial Court has therefore held that the suit was not maintainable at the instance of the plaintiff. Even if it is taken on the basis of the decision arrived at by the trial Court on issue no.1 that Geeta Corporation was a partnership firm, how the defendant could be absolved from his liability to return the amount by saying that the suit had not been filed by the partnership firm or that Natvarlal Gordhandas Modi had not filed the suit on behalf of the partnership firm or as a partner. The contention is hypertechnical that Natvarlal Gordhandas Modi had himself come with the case that he was the sole proprietor of Geeta Corporation and therefore unless he had filed the suit in his capacity as a partner of Geeta Corporation, he could not have filed the suit in his capacity as the proprietor of Geeta Corporation. In the opinion of this Court, whether Natvarlal Gordhandas Modi files the suit as a partner of Geeta Corporation or he files the suit as sole proprietor of Geeta Corporation, the fact remains that in the frame of the suit itself, the suit was filed by Natvarlal Gordhandas Modi for and on behalf of Geeta Corporation. Even if the cheque through which the payment was made was signed by two persons as partners of Geeta Corporation, Shri Natvarlal Gordhandas Modi being one of the partners of Geeta Corporation could maintain the suit even as a partner of the said partnership firm. In such matters, the description of the party, in the opinion of the Court, is not material. Whether he has filed the suit as a partner of the firm or he has filed the suit as sole proprietor of Geeta Corporation, in either of the case, the defendant was liable to return the amount once the receipt of the amount was admitted by the defendant and the defendant failed to prove that the amount had been returned. I called upon learned Counsel for the defendant to show the law on the point that in such a situation, the suit should be said to be not maintainable, but the learned Counsel failed to show any

law on this aspect of the matter and I find that several authorities which were cited before the trial Court in this regard were simply brushed aside by the trial Court by saying that these authorities were on different facts and the facts involved in this case were on different points. In this view of the matter, in the opinion of this Court, the trite law is that the suit could be filed and maintained even by one of the partners on behalf of the partnership firm and even as a sole proprietor he could file the suit. In either case, the suit was maintainable and therefore in the opinion of this Court, the suit should have been decreed rather than being dismissed in view of the admitted position between the parties that the amount had been paid to the defendant and in view of the fact that the defendant had failed to prove the return of the amount. This appeal is therefore allowed. The decree passed by the trial Court is set aside and it is ordered that the plaintiff is entitled to recover the sum of Rs.10,000/- from the defendant with interest at the rate of 9% per annum as per the pronote from the date of the pronote, i.e. 13th Sept.1978 till realisation. No order as to costs.

(M.R. Calla, J.)
Sreeram.